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[Request for Relief from Error in Bid]. B-188620. June 2, 1977.
3 pp.

Decision re: E. I. DuPont DeNemours and Co., Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other: General Government (906).

Organization Concerned: Forest Service; Department of Agriculture; Nalle Plastics.

Authority: 39 Comp. Gen. 36. 39 Comp. Gen. 405. B-184249 (1975).
B-186625 (1976). B-164530 (2) (1966).

The Department of Agriculture requested a decision concerning the propriety of correcting a mistake after award of contract. The company's request for relief from error in bid was denied because no mutual mistake existed between contracting officer and offeror, and because contracting officer was not on actual or constructive notice of offeror's unilateral mistake in bid. (Author/QM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20540

FILE: B-188620

DATE: June 2, 1977

MATTER OF: E. I. DuPont DeNemours and Company, Inc.

DIGEST:

Request for relief from error in bid must be denied where no mutual mistake exists between contracting officer and offeror, or where contracting officer was not on actual or constructive notice of offeror's unilateral mistake in bid.

The United States Department of Agriculture has requested our decision concerning the propriety of correcting a mistake claimed after award by E. I. DuPont DeNemours and Company, Inc. (DuPont), the successful low bidder for contract 0062618 (Invitation for Bids 12-100-12).

The contract, awarded on November 19, 1976, requires DuPont to furnish 1,285,000 linear feet of photodegradable plastic netting to the United States Forest Service (Forest Service). DuPont bid a total price of \$60,951.60 for the two kinds of tubed netting which comprised item 1, and \$2,669.10 for item 2, which was for netting in rolls. The only other bidder, Nalle Plastics (Nalle), bid \$62,001.25 for item 1, and did not bid on item 2.

On December 7, 1976, DuPont notified the Forest Service that it had inadvertently omitted freight charges when submitting its bid on this solicitation. It requested that the contract be reformed to include freight costs, approximately \$12,000. DuPont had been the Government's sole source of supply for this item in previous years, and its previous contract prices had not included the cost of delivery because the contracts had specified delivery F.O.B. origin.

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When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake was mutual or the contracting officer was on actual or constructive notice of a unilateral error prior to award. No valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the bid. In determining whether a contracting officer has a duty to verify bid prices, we have stated that the test is whether under the facts and circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer, without making it necessary for the contracting officer to assume the burden of examining every bid for possible error. R. E. Lee Electric Co., Inc., B-184249, November 14, 1975, 75-2 CPD 305, and cases cited therein.

Here, the record shows neither mutual mistake nor actual notice of mistake, and we see no reason to charge the contracting officer with constructive notice of the error. The contracting officer states that he was not on notice of error at time of award because bid prices on item 1, the competitive item, were within 2 percent of each other and only DuPont bid for item 2. See Schurr & Finlay, Inc., B-186625, July 7, 1976, 76-2 CPD 18. Moreover, the contracting officer reports that a Government estimate was not prepared because previous procurements were awarded DuPont on a sole source basis.

In forwarding DuPont's claim to this Office, the Forest Service has suggested that perhaps its contracting officer should have recognized the possibility of a mistake in both DuPont's and Nalle's bids because DuPont's past contracts had been F.O.B. origin and shipping costs had approximated 20 percent of cost. The inference is that a reasonable F.O.B. destination contract price would have been about 20 percent more than the price stated in previous contracts. However, while the contracting officer apparently knew of the prices on earlier contracts for these items, the record demonstrates that he had not participated personally in the earlier negotiated procurements and was unaware that the prior contract prices did not include shipping costs. Although this information was available in the files of the Forest Service's regional

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contract negotiation office, there is no duty to compare prior procurement prices in order to verify the accuracy of current offers. 39 Comp. Gen. 36 (1959), affirmed 39 Comp. Gen. 405 (1959); B-164530(2), August 27, 1968. In any case, we do not think it would be unreasonable for the contracting officer to conclude that a competitive procurement could result in prices 20 percent lower than under an earlier sole source procurement of the same material.

Since there was neither mutual mistake nor notice to the contracting officer of DuPont's unilateral mistake, the request for relief is denied.


Deputy Comptroller General
of the United States